

1                                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2                                   **COMMISSIONERS**

3                   JEFF HATCH-MILLER, Chairman  
4                   WILLIAM A. MUNDELL  
5                   MARC SPITZER  
6                   MIKE GLEASON  
                    KRISTIN K. MAYES

In the matter of:	)	DOCKET NO. S-20393A-05-0521
	)	
MICHAEL R. BROOKS, CRD#2086694,	)	DECISION NO.    68315
and MARIA BROOKS, husband and wife,	)	
3169 Point White Drive	)	<b>ORDER TO CEASE AND DESIST, FOR</b>
Bainbridge Island, WA 98110	)	<b>RESTITUTION, FOR ADMINISTRATIVE</b>
	)	<b>PENALTIES, AND OF REVOCATION</b>
Respondents.	)	

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12           On July 22, 2005, the Securities Division (“Division”) of the Arizona Corporation

13 Commission (“Commission”) filed a Notice of Opportunity for Hearing Regarding Proposed Order

14 To Cease and Desist, Order for Restitution, for Administrative Penalties, of Revocation, and for

15 Other Affirmative Action (“Notice”) against Respondents MICHAEL R. BROOKS (“BROOKS”)

16 and MARIA BROOKS (collectively, “RESPONDENTS”), alleging violations of the Arizona

17 Securities Act (the “Act”). The Notice specified that RESPONDENTS would be afforded an

18 opportunity for an administrative hearing upon written request filed with the Commission’s Docket

19 Control within ten (10) days after receipt of the Notice, in accordance with A.A.C. Rule R14-4-

20 306(B).

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22           After the Division’s attempts to locate and serve RESPONDENTS by other methods,

23 including certified mail to their last known address, proved unsuccessful, RESPONDENTS were

24 served by publication, pursuant to A.A.C. Rule R14-4-303(H). The Division has published a

25 statement regarding the administrative proceedings at least once a week for four consecutive weeks

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1 in Maricopa County, in the "Arizona Business Gazette," on September 29, 2005; October 6, 2005;  
2 October 13, 2005; and October 20, 2005. The Division has also published statements regarding  
3 the administrative proceedings at least once a week for four consecutive weeks in the counties of  
4 RESPONDENTS' last known residences: King County, in the "King County Journal," on  
5 September 26, 2005; October 3, 2005; October 10, 2005; and October 17, 2005; and Kitsap  
6 County, in the "Bainbridge Review," on September 24, 2005; October 1, 2005; October 8, 2005;  
7 and October 15, 2005.

8 Service of process of the Notice as to RESPONDENTS is complete. RESPONDENTS failed  
9 to request an administrative hearing within 10 days after receipt of the Notice, pursuant to A.R.S. §  
10 44-1972 and A.A.C. Rule R14-4-306. RESPONDENTS failed to file an Answer within 30 days of  
11 service of the Notice, pursuant to A.A.C. Rule R14-4-305. Upon information and belief,  
12 RESPONDENTS are not represented by counsel.  
13

14 **I.**

15 **FINDINGS OF FACT**

16 1. BROOKS, CRD# 2086694, is and was at all pertinent times a registered securities  
17 salesman in Arizona, since April 26, 1994. BROOKS' last known address is 3169 Point White  
18 Drive, Bainbridge Island, Washington, 98110. BROOKS' last known post office box address is  
19 P.O. Box 4477, Seattle, Washington 98194. At all times pertinent to this action, BROOKS was  
20 registered in Arizona in association with Fox & Company Investments, Inc. ("Fox") from April  
21 1994 to May 26, 2004, when he was permitted to resign. BROOKS is currently not affiliated with  
22 any securities dealer.

23 2. MARIA BROOKS was at all relevant times the spouse of Respondent BROOKS.  
24 MARIA BROOKS is joined in this action under A.R S. § 44-2031(C) solely for purposes of  
25 determining the liability of the marital community.  
26

1           3.       At all relevant times, BROOKS and MARIA BROOKS (“RESPONDENTS”) were  
2 acting for their own benefit and for the benefit or in furtherance of the marital community.

3           4.       On or about November 30, 2001, BROOKS contacted a customer who resided in  
4 Scottsdale, Arizona, a client of Fox and a personal friend of BROOKS, to recommend a “hot” new  
5 investment opportunity for her in a Seattle-area company.

6           5.       BROOKS was the securities salesman for the Arizona customer’s individual  
7 retirement account (“IRA”) at Fox, and had known her for approximately ten years. As of October  
8 31, 2001, the client’s IRA was worth approximately \$10,268. Approximately \$9,834 of her IRA  
9 was held in a high yield bond fund, and the remainder was in a money market fund.

10          6.       BROOKS told his Arizona customer that the investment was not offered through  
11 Fox, but that he would personally deliver her investment to the promoters. BROOKS advised his  
12 customer to invest quickly because the deadline for making an investment was rapidly  
13 approaching. When the customer expressed concern about whether she would incur a tax penalty  
14 for withdrawing money from her IRA, BROOKS reassured her that the new investment would also  
15 be tax deferred. Based upon BROOKS’ representations and the trust the Arizona customer placed  
16 in him, she agreed to make the recommended investment.

17          7.       On or about November 30, 2001, BROOKS sent a facsimile of an authorization  
18 form for the customer to sign. The form authorized an early withdrawal from her IRA. That same  
19 day, BROOKS sold the customer’s shares of the high yield bond fund. The trade confirmation  
20 noted that the trade was unsolicited.

21          8.       On or about December 4, 2001, Fox, through its clearing broker, wired \$9,698.29 to  
22 the Arizona customer’s personal checking account at Wells Fargo Bank. That same day, the  
23 customer deposited \$8,740 directly into BROOKS’ Bank of America personal checking account,  
24 pursuant to his instructions.

25          9.       That same day, BROOKS withdrew \$8,500 from his personal checking account at  
26 Bank of America in the form of a cashier’s check made payable to the Department of the Treasury.

1           10.     The Arizona customer made numerous requests of BROOKS to provide her with  
2 proof of how her \$8,740 was invested. To date, BROOKS provided the customer only a one-page  
3 document for her 2001 tax return that showed her name, an account number and an account value  
4 of \$10,000. The tax document did not reveal where her purported investment was held.

5           11.     The customer became concerned because she was not receiving quarterly statements  
6 showing that her investment was growing. BROOKS told the customer that her money was  
7 invested in an energy company.

8           12.     Beginning in at least January 2004, the Arizona customer was no longer able to  
9 contact BROOKS because his telephone was disconnected. On or about February 3, 2004, the  
10 customer reported the loss of her investment to the Kirkland, Washington police department, which  
11 referred her to the State of Washington Department of Financial Institutions.

12           13.     On March 1, 2005, the State of Washington Department of Financial Institutions,  
13 Office of the Director, issued a Final Order against BROOKS, Order No. S-03-176-05-FO03,  
14 permanently revoking BROOKS' securities salesperson's license in the state of Washington,  
15 finding violations of the registration and anti-fraud provisions of the Washington Securities Act,  
16 and ordering penalties in the amount of \$15,000, and costs in the amount of \$7,800, based upon  
17 BROOKS' dealings with three customers, including the Arizona resident.

18           14.     On May 25, 2005, the National Association of Securities Dealers ("NASD"),  
19 Department of Enforcement issued a Default Decision against BROOKS, barring him from  
20 associating with any NASD member in any capacity for misuse and conversion of customer funds  
21 and for failure to provide requested information. An NASD Hearing Officer ordered BROOKS to  
22 pay restitution in the amount of \$8,740 to the Arizona customer, plus interest. BROOKS has failed  
23 to pay any restitution pursuant to the NASD Order.

24           15.     BROOKS misrepresented the use of the Arizona customer's investment funds.

25           16.     BROOKS engaged in unauthorized transactions in a client's account.

26           17.     BROOKS misappropriated investment funds.

18. BROOKS is subject to an order of an administrative tribunal, an SRO or the SEC denying, suspending or revoking membership or registration as a broker or dealer in securities or an investment adviser or investment adviser representative for at least six months, pursuant to A.R.S. § 44-1962(A)(8).

## II.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. BROOKS offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. BROOKS violated A.R.S. § 44-1991 by offering or selling securities within or from Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

4. BROOKS has engaged in dishonest or unethical practices in the securities industry, pursuant to A.R.S. § 44-1962(A)(10), including:

- a. Executing a transaction on behalf of a customer without authority to do so, pursuant to A.A.C. Rule R14-4-130(6);
- b. Employing, in connection with the purchase or sale of a security, a manipulative or deceptive device or contrivance, pursuant to A.A.C. Rule R14-4-130(14); and
- c. Making unauthorized use of securities or funds of a customer or converting customer securities or funds for personal benefit, pursuant to A.A.C. Rule R14-4-130(16).

5. BROOKS' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032 and 44-1962.

6. BROOKS' conduct is grounds for a restitution order pursuant to A.R.S. §§ 44-2032 and 44-1962.

7. BROOKS' conduct is grounds for administrative penalties under A.R.S. §§ 44-2036 and 44-1962.

8. BROOKS' conduct is grounds to revoke BROOKS's registration as a securities salesman with the Commission pursuant to A.R.S. § 44-1962.

### III.

## ORDER

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that BROOKS, his agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act. Respondent shall not sell any securities within or from Arizona without being registered in Arizona as a dealer or salesman, or exempt from such registration. Respondent shall not sell securities within or from Arizona unless the securities are registered in Arizona or exempt from registration. Respondent shall not transact business in Arizona as an investment adviser or an investment adviser representative unless licensed in Arizona or exempt from licensure.

IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that RESPONDENTS shall pay restitution to investors shown on the records of the Commission in the amount of \$8,740, plus interest at the rate of 10% per annum from the date of the investment, pursuant to A.A.C. Rule R14-4-308. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Commission. The Commission shall disburse the funds on a pro rata basis to investors. Any funds that the Commission is unable to disburse shall be transferred to the general

fund of the state of Arizona. If Respondent does not comply with this order of restitution, any outstanding balance shall be in default and shall be immediately due and payable.

IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-1962, that RESPONDENTS shall pay administrative penalties in the amount of \$15,000. Payment shall be made in full by cashier's check or money order on the date of this Order, payable to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full.

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1 IT IS FURTHER ORDERED that BROOKS's registration as a securities salesman is  
2 revoked pursuant to A.R.S. § 44-1962.

3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

5  
6  
7 /s/ Jeffrey M. Hatch-Miller  
CHAIRMAN

/s/ William A. Mundell  
COMMISSIONER

8  
9  
10 COMMISSIONER

/s/ Lowell Gleason  
COMMISSIONER

/s/ Kristin K. Mayes  
COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C.  
12 McNEIL, Executive Director of the Arizona  
13 Corporation Commission, have hereunto set my  
14 hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the  
16 City of Phoenix, this 5th day of  
December, 2005.

17 /s/ Brian C. McNeil  
18 BRIAN C. McNEIL  
19 Executive Director

20 \_\_\_\_\_  
21 DISSENT

22 \_\_\_\_\_  
23 DISSENT

24 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant  
25 to the Executive Director, voice phone number 602-542-3931, E-mail lhogan@azcc.gov

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